

SB0786



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB0786

Introduced 2/5/2015, by Sen. Mattie Hunter

SYNOPSIS AS INTRODUCED:

755 ILCS 5/11-13

from Ch. 110 1/2, par. 11-13

Amends the Probate Act of 1975. Provides that a guardianship order for a minor that incorporates language governing removal of the minor from the State encompasses only those removals which take place within one year of the order, and must include a provision for the guardian to provide notice to the parents of the date of removal and the residential address of the minor after removal. Effective immediately.

LRB099 06793 HEP 26867 b

A BILL FOR

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Probate Act of 1975 is amended by changing
5 Section 11-13 as follows:

6 (755 ILCS 5/11-13) (from Ch. 110 1/2, par. 11-13)

7 Sec. 11-13. Duties of guardian of a minor. Before a
8 guardian of a minor may act, the guardian shall be appointed by
9 the court of the proper county and, in the case of a guardian
10 of the minor's estate, the guardian shall give the bond
11 prescribed in Section 12-2. Except as provided in Section
12 11-13.1 and Section 11-13.2 with respect to the standby or
13 short-term guardian of the person of a minor, the court shall
14 have control over the person and estate of the ward. Under the
15 direction of the court:

16 (a) The guardian of the person shall have the custody,
17 nurture and tuition and shall provide education of the ward and
18 of his children, but the ward's spouse may not be deprived of
19 the custody and education of the spouse's children, without
20 consent of the spouse, unless the court finds that the spouse
21 is not a fit and competent person to have such custody and
22 education. If the ward's estate is insufficient to provide for
23 the ward's education and the guardian of his person fails to

1 provide education, the court may award the custody of the ward
2 to some other person for the purpose of providing education. If
3 a person makes a settlement upon or provision for the support
4 or education of a ward and if either parent of the ward is
5 dead, the court may make such order for the visitation of the
6 ward by the person making the settlement or provision as the
7 court deems proper. The guardian of the minor shall inform the
8 court of the minor's current address by certified mail, hand
9 delivery, or other method in accordance with court rules within
10 30 days of any change of residence.

11 (b) The guardian or other representative of the ward's
12 estate shall have the care, management and investment of the
13 estate, shall manage the estate frugally and shall apply the
14 income and principal of the estate so far as necessary for the
15 comfort and suitable support and education of the ward, his
16 children, and persons related by blood or marriage who are
17 dependent upon or entitled to support from him, or for any
18 other purpose which the court deems to be for the best
19 interests of the ward, and the court may approve the making on
20 behalf of the ward of such agreements as the court determines
21 to be for the ward's best interests. The representative may
22 make disbursement of his ward's funds and estate directly to
23 the ward or other distributee or in such other manner and in
24 such amounts as the court directs. If the estate of a ward is
25 derived in whole or in part from payments of compensation,
26 adjusted compensation, pension, insurance or other similar

1 benefits made directly to the estate by the Veterans
2 Administration, notice of the application for leave to invest
3 or expend the ward's funds or estate, together with a copy of
4 the petition and proposed order, shall be given to the
5 Veterans' Administration Regional Office in this State at least
6 7 days before the hearing on the application. The court, upon
7 petition of a guardian of the estate of a minor, may permit the
8 guardian to make a will or create a revocable or irrevocable
9 trust for the minor that the court considers appropriate in
10 light of changes in applicable tax laws that allow for
11 minimization of State or federal income, estate, or inheritance
12 taxes; however, the will or trust must make distributions only
13 to the persons who would be entitled to distributions if the
14 minor were to die intestate and the will or trust must make
15 distributions to those persons in the same amounts to which
16 they would be entitled if the minor were to die intestate.

17 (c) Upon the direction of the court which issued his
18 letters a representative may perform the contracts of his ward
19 which were legally subsisting at the time of the commencement
20 of the guardianship. The court may authorize the guardian to
21 execute and deliver any bill of sale, deed or other instrument.

22 (d) The representative of the estate of a ward shall appear
23 for and represent the ward in all legal proceedings unless
24 another person is appointed for that purpose as representative
25 or next friend. This does not impair the power of any court to
26 appoint a representative or next friend to defend the interests

1 of the ward in that court, or to appoint or allow any person as
2 the next friend of a ward to commence, prosecute or defend any
3 proceeding in his behalf. Any proceeding on behalf of a minor
4 may be commenced and prosecuted by his next friend, without any
5 previous authority or appointment by the court if the next
6 friend enters bond for costs and files it in the court where
7 the proceeding is pending. Without impairing the power of the
8 court in any respect, if the representative of the estate of a
9 minor and another person as next friend shall appear for and
10 represent the minor in a legal proceeding in which the
11 compensation of the attorney or attorneys representing the
12 guardian and next friend is solely determined under a
13 contingent fee arrangement, the guardian of the estate of the
14 minor shall not participate in or have any duty to review the
15 prosecution of the action, to participate in or review the
16 appropriateness of any settlement of the action, or to
17 participate in or review any determination of the
18 appropriateness of any fees awarded to the attorney or
19 attorneys employed in the prosecution of the action.

20 (e) Upon petition by any interested person (including the
21 standby or short-term guardian), with such notice to interested
22 persons as the court directs and a finding by the court that it
23 is in the best interest of the minor, the court may terminate
24 or limit the authority of a standby or short-term guardian or
25 may enter such other orders as the court deems necessary to
26 provide for the best interest of the minor. The petition for

1 termination or limitation of the authority of a standby or
2 short-term guardian may, but need not, be combined with a
3 petition to have a guardian appointed for the minor.

4 (f) The court may grant leave to the guardian of a minor
5 child or children to remove such child or children from
6 Illinois whenever such approval is in the best interests of
7 such child or children. The guardian may not remove a minor
8 from Illinois except as permitted under this Section and must
9 seek leave of the court prior to removing a child for 30 days
10 or more. The burden of proving that such removal is in the best
11 interests of such child or children is on the guardian. When
12 such removal is permitted, the court may require the guardian
13 removing such child or children from Illinois to give
14 reasonable security guaranteeing the return of such children.

15 The court shall consider the wishes of the minor's parent
16 or parents and the effect of removal on visitation and the
17 wishes of the minor if he or she is 14 years of age or older.
18 The court may not consider the availability of electronic
19 communication as a factor in support of the removal of a child
20 by the guardian from Illinois. The guardianship order may
21 incorporate language governing removal of the minor from the
22 State within one year of the order, but must include a
23 provision for the guardian to provide notice to the parents of
24 the date of removal and the residential address of the minor
25 after removal.

26 Before a minor child is temporarily removed from Illinois

1 for more than 48 hours but less than 30 days, the guardian
2 shall inform the parent or parents of the address and telephone
3 number where the child may be reached during the period of
4 temporary removal and the date on which the child shall return
5 to Illinois. The State of Illinois retains jurisdiction when
6 the minor child is absent from the State pursuant to this
7 subsection. The guardianship order may incorporate language
8 governing out-of-state travel with the minor.

9 (Source: P.A. 98-1082, eff. 1-1-15.)

10 Section 99. Effective date. This Act takes effect upon
11 becoming law.